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Extreme poverty and human rights

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, submitted in accordance with Human Rights Council resolution 17/13.

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Report of the Special Rapporteur on extreme poverty and human rights

Summary

In the present report, the Special Rapporteur on extreme poverty and human rights analyses the obstacles to access to justice for persons living in poverty. Access to justice is a fundamental right in itself and essential for the protection and promotion of all other civil, cultural, economic, political and social rights. Without effective and affordable access to justice, persons living in poverty are denied the opportunity to claim their rights or challenge crimes, abuses or human rights violations committed against them. The Special Rapporteur emphasizes that improving access to justice for persons living in poverty requires tackling a range of legal and extralegal obstacles present both within and outside of the formal justice system, including social, economic and structural obstacles.

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I. Introduction

1. Since the submission of her previous report to the General Assembly (A/66/265), the Special Rapporteur submitted her annual report to the Human Rights Council at its twentieth session (A/HRC/20/25), which was devoted to following up the recommendations made in country mission reports. She also submitted reports on her official visits to Timor-Leste (A/HRC/20/25/Add.1) and Paraguay (A/HRC/20/25/Add.2).

2. In addition, pursuant to Human Rights Council resolution 17/13, the Special Rapporteur submitted the final draft of [illegible] and human rights to the Council.

3. During the [illegible] and held working [illegible] Bank, academic [illegible] people living in poverty. A full list of [illegible] report to the Human Rights Council, as well as being [illegible] of the mandate.[1]

II. Normative framework

4. The indivisibility, interdependence and interrelatedness of human rights is often recalled and reiterated in human rights instruments and by human rights bodies, although frequently disregarded in practice. The interdependence of all human rights is unequivocal when considering the situation of persons living in poverty, which is both a cause and a consequence of a range of mutually reinforcing human rights violations. Eradicating extreme poverty not only requires improving access to housing, food, education, health services, water and sanitation, but also requires ensuring that persons living in poverty have the resources, capabilities, choices, security and power necessary to enjoy the whole spectrum of human rights.

5. Access to justice is crucial for tackling the root causes of poverty, exclusion and vulnerability, for several reasons. First, owing to their vulnerability, persons living in poverty are more likely to fall victim to criminal or illegal acts, including sexual or economic exploitation, violence, torture and murder. Crime and illegality are also likely to have a great impact on their lives as it is hard for them to obtain redress and as a result they may fall further into poverty. Second, access to justice is important because justice systems can be tools to overcome deprivation, for example, by developing jurisprudence on social and economic rights. Third, when vulnerable persons cannot access justice systems, they are sometimes forced to take justice into their own hands through illegal or violent means, or to accept unjust settlements. Thus, fair and effective justice systems are an important way to tackle impunity and reduce violence and conflict.[2] Fourth, the inability of the poor to pursue justice remedies through existing systems increases their vulnerability to poverty and violations of their rights. In turn, their increased vulnerability and

[1] www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx.

[2] *Programming for Justice: Access for All* (Bangkok, United Nations Development Programme, 2005), p. 3.

exclusion further hamper their ability to use justice systems. This vicious circle impairs the enjoyment of several human rights.

6. Persons living in poverty have a right to access justice without discrimination of any kind, and a right to due process, understood as the right to be treated fairly, efficiently and effectively throughout the justice chain.[3] States have assumed obligations in that regard, by committing themselves to respect, protect and fulfil several rights such as the right to an effective remedy (e.g., Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, art. 2.3; Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture, arts. 13 and 14); the right [illegible] (e.g., International Covenant on [illegible] (e.g., Universal [illegible] and Political [illegible] Declaration of [illegible] Rights, art. 14.3 (b)-(d)); and the [illegible] (e.g., Universal Declaration of Human Rights, art. 7; International Covenant on Civil and Political Rights, art. 26).

7. In addition, several other rights are also relevant, such as to enjoy rights without discrimination (e.g., Universal Declaration of Human Rights, art. 2; International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2); the right to recognition as a person before the law (e.g., Universal Declaration of Human Rights, art. 6; International Covenant on Civil and Political Rights, art. 16; Convention on the Elimination of All Forms of Discrimination against Women, art. 15; Convention on the Rights of Persons with Disabilities, art. 12); and the right to seek and receive information (e.g., International Covenant on Civil and Political Rights, art. 19.2).[4]

8. The right to an effective remedy is a key element of human rights protection and serves as a procedural means to ensure that individuals can enforce their rights and obtain redress. The lack of effective remedies for violations of human rights such as discrimination is still a pressing reality in many jurisdictions, as is the lack of judicial protection for economic, social and cultural rights. However, this concept entails more than improving access to judicial and adjudicatory mechanisms. It also implies that remedies must be effective and legal, and that judicial outcomes must be just and equitable. The right to an effective remedy also includes reparation, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

9. The right to equality before the courts and tribunals and the right to a fair trial consist of a complex set of rules and practices that include the right to a fair and public hearing within a reasonable time and respect of the principles of equality of

[3] The justice chain is the series of steps that a person has to make to access justice through the formal justice system or to claim their rights. The chain is complex and differs according to the case, the context and the type of legal system in place. It includes filing a claim, contact with the police, investigation, arrest/summons/bail, prosecution, court appearances and mediation/adjudication. UN-Women, *2011-2012 Progress of the World's Women: in Pursuit of Justice* (2011), p. 48 (hereafter UN-Women Report 2011-2012).

[4] Various international human rights instruments specifically include the issue of access to justice for particular groups, for example, the Convention on the Rights of Persons with Disabilities (art. 13) and the Declaration on the Rights of Indigenous Peoples (arts. 5 and 40). Although groups that suffer from discrimination are overrepresented among the poor, the present report does not address their particular challenges, in favour of taking a broader view.

arms and presumption of innocence, among others. While the rules regarding due process are included in several provisions of international human rights treaties, of particular relevance is article 14 of the International Covenant on Civil and Political Rights, which provides that "all persons shall be equal before the courts and tribunals" in criminal and civil cases[5] and creates an obligation upon States to ensure that everyone has access to "a fair and public hearing by a competent, independent and impartial tribunal established by law" in "the determination of any criminal charge against him or her or of his or her rights and obligations in a suit at law".

11. Thus, States have an obligation to construct a legal and institutional framework which facilitates access to independent and effective judicial and adjudicatory mechanisms and ensures a fair outcome for those seeking redress, without discrimination of any kind. However, guaranteeing de jure access to judicial and adjudicatory mechanisms is not sufficient to ensure that all individuals have de facto access to justice. States must also take positive measures to ensure laws and policies are substantively non-discriminatory, including measures to eliminate conditions which cause or help to perpetuate discrimination.[7] In many instances, laws, policies and procedures may indirectly discriminate against, or have a disproportionate impact upon, persons living in poverty. In addition, various extralegal factors also limit or obstruct their de facto access to justice.

12. To ensure that the poor have de facto enjoyment of the rights to an effective remedy, equality before the courts and a fair trial, States must take effective measures to remove any regulatory, social or economic obstacles that impede or hamper persons living in poverty from accessing remedies and securing a fair and equitable outcome in any judicial or adjudicatory process. This includes removing obstacles imposed by the unequal economic or social status of those seeking redress, taking into account the principles of equality before the courts and equality of arms, which are integral parts of due process.[8]

13. These principles require that claimants or defendants must be able to exercise their rights and defend their interests effectively and in full procedural equality with other parties. When there is a big disparity in the economic or social status of litigants, as is often the case when those living in poverty seek redress for grievances against more powerful parties, there is a high risk of an unequal trial. For example, this is likely when impoverished workers want to bring a case against their

[5] Human Rights Committee, General Comment No. 32, para. 13.

[6] Human Rights Committee, General Comment No. 32, para. 9, and Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 35. Economic and social status is explicitly included as a ground of discrimination in the American Convention on Human Rights (art. 1).

[7] CCPR/C/GC/18, para. 9, and E/C.12/GC/20, para. 8.

[8] Human Rights Committee, General Comment No. 32.

employer for unfair and unjust working conditions or when a woman without personal income or resources brings a case against her partner for domestic violence. Procedural inequality can also arise in litigation against the State.

14. The existence of significant socioeconomic inequality between the parties in a proceeding requires States to adopt all necessary measures to help to reduce or eliminate the deficiencies that impair or diminish the effective protection of the rights at stake. If such measures are not taken, those who are socially or economically disadvantaged do not enjoy a real opportunity for justice or the benefits of due process of law in an equal manner. These obligations arise in civil and criminal cases and in pretrial stages of the justice chain, when the rights of persons living in poverty are also at stake.

15. Even in the most developed countries, legal disempowerment is rife and persons living in poverty do not have full de jure or de facto access to justice. Around the world, persons living in poverty face a range of obstacles in claiming and enforcing, or contesting violations of, their rights. Such obstacles not only imply violations of their rights to a remedy and due process, but also undermine their ability to enjoy other human rights equally and without discrimination. States, therefore, are under an obligation to eliminate obstacles which frustrate the efforts of the poorest and most vulnerable to access justice. Effective enforcement of and compliance with judicial rulings in favour of persons living in poverty are also essential to ensure that persons living in poverty can benefit from the law.

16. The Special Rapporteur chose to focus the present report on obstacles to access to justice, because overcoming such obstacles is fundamental to improving the situation of the poorest and most vulnerable, and empowering them to claim their rights. The report is based on the understanding that meaningful access to justice for persons living in poverty does not depend only on legal tools or access to legal services, lawyers and courts, but also requires a more comprehensive and holistic approach that takes into account broader structural, social and economic factors.

III. Obstacles which impede persons living in poverty from accessing justice

17. Some of the obstacles that persons living in poverty face, such as the cost of legal advice, administrative fees and other collateral costs, relate directly to their lack of financial resources. Other obstacles, including lack of access to information and lack of legal recognition arise out of discrimination against the poorest and most marginalized. Furthermore, institutional and structural obstacles are found in the design and operation of justice systems; these include the inadequate capacity and resources of courts, the police and prosecution corps, the corrupt practices therein, and the location of courts and police stations. Poor functioning of the justice system particularly affects the poor, because pursuing justice requires a much greater effort and investment in terms of money and time for them, while their chances of a just and favourable outcome are worse. The deprivations that persons living in poverty encounter throughout their lives — lack of access to quality education, reduced access to information, limited political voice and social capital — translate into lower levels of legal literacy and awareness of their rights, creating social obstacles to seeking redress.

18. Certain groups that suffer from structural discrimination and exclusion and are disproportionately represented among the poor, particularly ethnic and racial minorities, migrants and indigenous peoples, encounter additional barriers to accessing justice. Those difficulties are multiplied for women living in poverty, who experience compounded discrimination and disempowerment, not to mention financial constraints. Therefore, across different contexts, women living in poverty experience particular difficulties in accessing justice mechanisms and winning judicial recognition, action and enforcement for crimes, discrimination and human rights violations they are disproportionately subject to. Children are often denied the due process guarantees that they are entitled to on the same basis as adults, as well as additional protections that are necessary, in particular when they are particularly deprived or marginalized.

19. Thus, persons living in poverty face significant barriers that seriously impede or discourage them from seeking justice. Those barriers include the following.

A. Social and cultural barriers

20. Owing to deep asymmetries of power, the stigma and discrimination they suffer and their socioeconomic disadvantages, persons living in poverty often reasonably decide against bringing a case to court, thereby precluding any possibility of obtaining justice.

Fear of reprisal and mistrust of the justice system

21. Persons living in poverty may choose not to seek justice because they fear reprisal or sanction from more powerful actors within or outside their community, or fear being stigmatized or discriminated against. Having experienced discrimination and abuse at the hands of the police and other authorities throughout their lives, people living in poverty are often averse to relying upon formal legal processes for fear of being subject to further exploitation or corruption, or of receiving an unjust outcome. Certain groups, such as ethnic minorities, indigenous peoples or irregular migrants, may be reluctant to engage with the justice system owing to concerns relating to the respect of their own values or owing to their immigration status.

22. Women living in poverty often face particularly strong social barriers to pursuing cases. In some contexts, there are strong cultural norms against women speaking on their own behalf in disputes.[9] Social sanction is a particular obstacle for women who are victims of domestic or sexual violence. In the case of gender-based violence, for example, social constraints account partly for the disproportionately high underreporting and attrition rates.[10]

Socioeconomic subordination

23. Another social barrier relates to the powerlessness and dependence of persons living in poverty or their subordination to other groups or persons. For example, in some societies, poor women may be unable to approach justice systems without the assistance of a male relative, while in very hierarchical societies those who are

[9] UN-Women Report, 2011-2012, p. 52.
[10] Ibid., p. 51.

economically dependent on other groups are unlikely to pursue justice claims against them.

Lack of empowerment and access to information

24. Awareness and understanding of the existence of legal rights, and of the ways in which such rights can be invoked before and enforced by judicial and adjudicatory mechanisms, is fundamental to enjoying the full range of civil, cultural, economic, political and social rights, and for remedying violations thereof.

25. Persons living in poverty are often deprived from a young age of the opportunity to acquire the tools, social capital and basic legal knowledge necessary to engage with the justice system. They are unaware of the existence and contents of their legal rights and entitlements, of the State's obligations and duties towards them, and of how to secure the assistance they need. This is especially the case for those who experience discrimination in accessing education on grounds such as ethnicity, gender or disability.

26. States not only have an obligation to ensure the enjoyment of the right to education, including human rights education (International Covenant on Economic, Social and Cultural Rights, art. 13) but also an obligation to ensure access to information without discrimination (International Covenant on Civil and Political Rights, arts. 2 and 19), which implies an obligation to proactively put information of public interest in the public domain and to ensure easy, prompt, effective and practical access to such information for all persons.[11] In the context of access to justice, this requires, for example, that States proactively inform the public about new or changing laws, and make legal materials, such as laws, judgements, trial transcripts and adjudication procedures, available and reasonably accessible.

27. Simply making information available is not sufficient. The burdens involved in accessing information, such as travel costs, fees, long waiting periods, and interaction with State officials, can act as disincentives for the poorest. States often do not take into account the difficulties, such as financial, geographical, technological or linguistic barriers, that the poor face in accessing information. For example, in many States, information about new statutes is disseminated in a very limited way, or access to copies of enacted laws is conditional upon the payment of a fee.[12] Information may only be available in written format, thus creating obstacles for those with low levels of literacy and persons with disabilities, or may only be published online or in commercial newspapers, or only in one official language.

B. Legal and normative barriers

Inadequate legal framework and normative protection

28. Laws tend to reflect and reinforce the privileges and interests of the powerful. Thus, many laws are inherently biased against persons living in poverty, do not recognize or prioritize the abuses they regularly suffer, or have a disproportionately harsh impact on them. A legal system based on prejudices against the poor does not

[11] Human Rights Committee, General Comment No. 34, para. 19.

[12] *Making the Law Work for Everyone*, Vol. II (New York, Commission on the Legal Empowerment of the Poor and United Nations Development Programme, 2008), p. 19.

protect them, but rather undermines their rights and autonomy, or seeks to control, criminalize and segregate them. Legislators often do not recognize and estimate the issues that negatively affect persons living in poverty as serious and in need of active remedy.

29. For example, in many legal systems, economic, social and cultural rights are not sufficiently protected, and discrimination on the grounds of socioeconomic situation is not recognized. Similarly, issues such as abuses in the informal employment sector or the exploitation of tenants by landlords, all of which disproportionately affect persons living in poverty, are often not legislated against in an effective manner. Meanwhile, actions which are undertaken by persons living in poverty out of necessity, such as sleeping in public spaces or street vending, are criminalized. Hence, reforms aimed at improving access to justice by the poor must not neglect the need to modify or repeal certain laws or strengthen others.

30. Women living in poverty suffer compounded obstacles to accessing justice generated by inadequate legal frameworks and normative protection, because the deprivations and abuse that women suffer as women are often not recognized in law. Many States lack legal and constitutional frameworks that guarantee women the enjoyment of their rights, such as anti-discrimination laws. Issues such as domestic violence, sexual violence, reproductive rights, and equal pay and inheritance rights are not adequately addressed in many legal regimes, thus curtailing any possibility of seeking remedies. This has a particularly devastating impact on poor women, who are often left without any formal or informal recourse.

Lack of judicial review for social policies

31. Often, there is no mechanism in place to review social policies or administrative decisions that have a major impact on the enjoyment of their rights by persons living in poverty. The lack of remedies for the negative impacts of social policy in the areas of health, housing, education and social security, or for administrative decisions relating to welfare benefits or asylum proceedings, often results in inability to seek redress in cases of violations of key human rights, such as the right to equality and non-discrimination and the right to social security. This is a major obstacle to accessing justice for persons living in poverty, who are disproportionately affected by those policies.

32. The lack of judicial review or complaints mechanisms for social policy, compounded by a lack of justiciability of economic, social and cultural rights at the domestic level, creates the perception that social policy is a charitable measure rather than part of an obligation to ensure the enjoyment of human rights. The recognition of rights imposes the obligation to establish judicial or other remedies that enable rights holders to invoke their protection in courts, or before other similarly independent bodies, when they are infringed. The lack of adequate and effective remedies for violations of economic, social and cultural rights is thus an infringement of international human rights instruments.

Lack of legal identity

33. The right to be recognized as a person before the law is a fundamental human right (International Covenant on Civil and Political Rights, art. 16, and Convention on the Rights of the Child, art. 7), and is at the core of the right to access justice. Many persons living in poverty are de facto deprived of accessing courts and other

public services as they lack legal identity. With more than 50 million births going unregistered every year,[13] the lack of formal registration is a considerable barrier to legal recognition before the law, which has a disproportionate impact on the poorest and most marginalized. Without recognition, individuals are unable to access social services or to access courts to seek remedies for violations of their human rights.

34. Persons living in poverty face greater and disproportionate barriers and disincentives in accessing registration services, which are often geographically distant for them, time-consuming and unaffordable. The travel costs to access registration services are added to relatively high fees charged for the issuance of identity documents and to the working time lost. These costs are more burdensome for the poor.

C. Institutional and structural obstacles in the justice chain

35. Persons living in poverty face obstacles in each of the steps that they must take to seek redress through the formal justice system.

Location and physical accessibility

36. As the majority of the world's poor live outside of urban centres, with many of the most marginalized living in remote, hard-to-reach areas, the lack of nearby police centres and the centralization of national justice systems constitute serious obstacles to their accessing justice.

37. While police deployment can be problematic when communities living in poverty are disproportionately targeted, the absence of police and other institutions necessary for the administration of justice in rural, poor and marginalized areas is a common problem. Courthouses, particularly appeal courts, are often located only in capital cities or large towns. Police officers, prosecutors and lawyers are also concentrated in urban areas, along with registries for land titling and for births, deaths and marriages. In such circumstances, persons living in poverty often have to travel long distances at great cost to engage with the justice system, exposing themselves to unfamiliar environments and unsafe conditions.

38. Such factors often act as a persuasive deterrent against seeking redress from judicial or adjudicatory mechanisms, or may indeed represent an insurmountable obstacle for the poorest and most marginalized. This is especially so for those who have limited mobility, such as older persons or persons with disabilities, or those for whom travel is more difficult or dangerous, including women and children.

39. The geographical remoteness of justice mechanisms for persons living in poverty can also exacerbate their situation and lead to violation of other human rights. Those without easy and immediate access to law enforcement officials are unable to seek immediate redress or protection from violence, abuse and exploitation, and will have greater difficulty in contesting land issues and forced evictions. The police may be less likely to pursue complaints if they have to travel long distances to do so, particularly where resources are scarce.

[13] United Nations Children's Fund (UNICEF), information available at www.unicef.org/factoftheweek/index_53718.html.

40. Persons living in poverty, particularly those with disabilities or older persons, may experience additional obstacles in accessing justice when courts and police stations are not appropriately designed, and when court processes are not adaptable. For example, many judicial systems are heavily reliant on paper forms and written submissions, and on the presentation of oral evidence. Often, police stations and courts are not wheelchair accessible. Where measures are not in place to enable judicial bodies to adapt their processes for those in need, including by providing aid to defendants, claimants, witnesses and jurors who require it, such persons are excluded from accessing and benefiting from the justice system.

Inadequate capacity and resources

41. Shortfalls in financial and human resource allocations to courts, the police and prosecution corps, and insufficient training and capacity-building for judicial and law enforcement officers translate into failures in the judicial system which infringe upon access to justice. Such failures, including delays (see paras. 68-69 below), flawed or insufficient evidence-gathering, lack of enforcement, and abuse, undermine the effective functioning of judicial and adjudicatory mechanisms and have a disproportionate impact on and undermine the human rights of persons living in poverty.

42. When judicial systems receive inadequate financial and human resource allocations from State budgets, police stations, prosecution corps and courthouses are understaffed and poorly equipped, and benches are deprived of adequate numbers of judges. The result is serious neglect and even mistreatment of those seeking justice, which is more pronounced for the most disadvantaged, whose cases are usually underprioritized. Again, this frequently has an especially harsh impact on women, as often the criminal justice and legal system lacks capacity to ensure a swift, fair and gender-sensitive approach.

43. Non-registration of complaints by the police is a practice common in overburdened and underresourced criminal justice systems. In such cases, it is usually the complaints of persons living in poverty that go unregistered, owing to bias and discrimination, and their disempowerment and lack of knowledge and information about their rights. Cases involving gender-based violence, notably rape allegations, often go unregistered, particularly when the victim is a woman living in poverty and lacks awareness or the means to pressure the police to investigate.

44. The rights and interests of women are thus especially compromised by badly resourced and trained judicial systems and police forces, State organs that traditionally reflect and prioritize the interests of men and are dominated by men. Not only do women living in poverty come up against stark power imbalances and discriminatory cultural norms and other social structures when instituting legal proceedings, they are also disadvantaged by the lack of training afforded to officials on the application of laws relating to gender-based violence and the proper treatment of victims and handling of complaints. Women living in poverty have even less power and capacity to challenge this state of affairs.

Stigma and lack of understanding of the needs of the poor

45. Often, police officers, court staff and other justice sector personnel reflect the discriminatory attitudes of the wider society and are not adequately trained to perform their roles without discrimination or bias against persons living in poverty.

46. The background and daily experience of justice sector staff, especially judges, are often very different from those of persons living in poverty, and this often means that, without proper training and sensitization, they do not understand and value their views, choices, behaviours or problems. Persons living in poverty may be denied access to impartial justice owing to negative stigma and stereotyping from judges, prosecutors and police.

47. Police forces are the primary and most common interface with the justice system for persons living in poverty. All too often, however, police actions and procedures act as a barrier to meaningful access to justice for persons living in poverty and they are treated as potential criminals, rather than as rights-holders whose access to justice must be supported and facilitated.

Excessive and arbitrary use of detention and incarceration

48. Across developing and developed countries, incarceration rates are extremely high for persons living in poverty. Disproportionately high numbers of them are arrested, detained and imprisoned as a result of law enforcement officials' frequent use of poverty, homelessness or disadvantage as an indicator of criminality, and they encounter considerable obstacles in manoeuvring within or exiting the criminal justice system.

49. The provision of bail pending trial is often subject to stringent and onerous conditions. In the vast majority of cases, those requirements are impossible to meet for the poorest. Therefore, they are more likely to remain in detention pending trial. This dramatically increases the likelihood that they will ultimately be convicted: not only does it put them in a vulnerable position, in which they will be more inclined to accept unfair "plea deals" or to make admissions of guilt in order to secure a swifter release, it also impedes their ability to liaise with lawyers or obtain character witnesses, and causes them to lose their employment or social housing, thereby creating a disincentive for the court to give a suspended or community sentence.[14]

50. The economic and social costs of detention and incarceration can be devastating for persons living in poverty. Detention and incarceration can lead to loss of income and employment and often temporary or permanent withdrawal of social benefits. Their families, particularly their children, are also directly affected. Therefore, criminal justice systems predicated on detention and incarceration, even for minor non-violent crimes, can themselves represent a significant obstacle to access to justice for persons living in poverty. Those who are poor and vulnerable are likely to leave detention disproportionately financially, physically and personally disadvantaged.

Fees and costs

51. In addition to the costs of legal assistance (see paras. 60-67 below), there are numerous other costs associated with accessing justice which constitute a major barrier for the poor, who simply cannot afford those expenditures. Fees are encountered at every stage of the legal process, along with several indirect costs, such as for obtaining a legal document, witness costs, commissioning independent expertise, photocopies and phone calls. The cumulative impact of those costs is a

[14] E/CN.4/2006/7, para. 66.

crucial factor preventing the poor from accessing and benefiting from the justice system.

52. Costs are particularly burdensome in criminal cases, where defendants must often put up large sums of money to be granted bail, or risk long periods of pretrial detention, during which they may have to pay for food or telephone use. Those fees can have the effect of prolonging an individual's detention and exacerbating the conditions in which he or she is detained. Moreover, they result in a situation in which criminal defendants with financial means are in a much more favourable position than those without.

53. In civil claims, fees are payable when claims and motions are filed or when time limits are exceeded. In addition, the unsuccessful party in a civil case is often ordered to pay the legal costs of the successful party. Such fees are unaffordable for persons living in poverty and act as a disincentive to instituting claims. For example, in some countries the cost of divorce proceedings, including child custody claims, or of filing a land inheritance claim is many times the monthly income of a person living in poverty, and presents an even greater barrier for poor women.

54. The existence of administrative and other fees disproportionately disadvantages women, who often have less financial independence or access to financial resources. Women's access to the judicial system to determine civil claims with respect to divorce, child custody and land inheritance is impeded when excessive fees are imposed. Women living in poverty may also be prevented from filing criminal charges for domestic violence, rape or other forms of gender-based violence because they are unable to afford the fees incurred.

55. In addition to formal administrative fees, persons living in poverty encounter other collateral costs in accessing justice. The cost of transportation to courts and of accommodation, together with the loss of income while away from employment or subsistence activities, may be impossible for the poor.

56. Those costs are particularly severe for persons who live in rural areas, who may have to travel for days to access the justice system. Individuals who have informal or precarious work are unlikely to obtain their employer's permission to take time off to attend a hearing, even if they are willing to forego pay. Attendance would mean they risk losing their jobs and income altogether. Caregivers, the majority of whom are women, may not be able to leave home to submit a claim or to attend a court hearing.

Corruption

57. In many countries, partly owing to overstretched and underfunded judicial systems, corruption is rife throughout police forces and prosecution corps, and among judicial officials. Illicit payments and favours enable those with financial and social capital to access the justice system with greater efficiency and effectiveness, and even to secure a certain outcome. In contrast, persons living in poverty, who cannot afford to pay bribes for services that should be free, have their claims and cases delayed, denied or discontinued.

58. Persons living in poverty are more likely than other individuals to be confronted with requests for bribes and to resort to paying bribes.[15] Moreover, bribes represent a greater burden for persons living in poverty, often meaning that they have to sell assets or sacrifice their health or education in order to meet such demands. Evidence shows that women are more likely to be affected by demands for bribes within the justice system[16] and in many cases they are also subject to harassment or abuse by law enforcement officers.

59. Persons living in poverty are not only denied access to justice when they are unable to meet the cost of bribes or of engaging in other corrupt activities, but they are also deterred from accessing the justice system when they perceive the system to be corrupt.

D. Non-existent or inadequate legal assistance

60. The right to legal assistance, enshrined in many major global and regional human rights instruments, is essential for ensuring due process and equality before the courts. The provision of free and competent legal advice and assistance to those who are otherwise unable to afford it is a fundamental prerequisite for ensuring that all individuals have fair and equal access to judicial and adjudicatory mechanisms.

61. International human rights law explicitly establishes the right to free legal assistance in criminal proceedings (International Covenant on Civil and Political Rights, art. 14). This is particularly important for those living in poverty, who face a range of obstacles in negotiating bail procedures, pretrial detention, trials and sentencing, and appeals. Nonetheless, free legal aid should not only be provided in criminal matters, but also in civil matters when individuals do not have sufficient resources to pay for legal assistance and, without such assistance, they are prevented from asserting their rights.[17] For example, when domestic law requires that individuals be represented by counsel to access judicial protection, the failure to provide free legal aid to persons without financial means would constitute a violation of the right to a fair trial and to effective judicial protection.

62. Lack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest tenancy disputes, eviction decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions. Indeed, exclusion of certain categories of claims from the scope of free legal aid, such as housing or immigration proceedings, or exclusion from representation before quasi-judicial tribunals, such as welfare or employment appeal boards, discriminates against the poor. Moreover, the legal

[15] *Report on the Transparency International Global Corruption Barometer 2007* (Berlin, Transparency International, 2007).

[16] UN-Women Report 2011-2012, p. 54.

[17] Human Rights Committee, General Comment No. 32, para. 10; draft universal declaration on the independence of justice, art. 95; Basic Principles on the Role of Lawyers, principle art. 1. This right is also well established in some regional mechanisms, see e.g. European Court of Human Rights, *Airey v. Ireland* (Application No. 6289/73) and *Steel and Morris v. The United Kingdom* (Application No. 68416/01); and Inter-American Court of Human Rights, Exceptions to the Exhaustion of Domestic Remedies, Advisory Opinion OC-11/90, August 10, 1990 (Ser. A) No. 11 (1990).

processes which relate to such civil matters are often extremely complex and their requirements onerous, creating insurmountable obstacles for those without the assistance of a lawyer, particularly if the State or other party enjoys such assistance. This is particularly troubling with respect to civil matters involving the most vulnerable groups, such as indigenous peoples, persons with disabilities and ethnic minorities, who often face serious deprivations and violations of their rights, and lack the means or ability to contest them.

63. Women face compounded difficulties in accessing legal aid in criminal and civil matters. This has a particular impact on poor female victims of criminal offences such as domestic violence, or those pursuing divorce, child custody or land inheritance.

64. Often, the criteria which govern access to State-funded legal assistance are arbitrary and overly restrictive, and rely heavily on means-testing to determine eligibility.[18] Means-testing is often inaccurate and is unable to take account of the wealth distribution within a household, disadvantaging those who have restricted access to household wealth, such as women and older persons. Furthermore, it fails to realistically reflect the options faced by persons living in poverty; for example, it may disqualify individuals if they have the option of disposing of household assets, even if those assets are used to produce food and generate subsistence income for the household.

65. The quality of legal services available to persons living in poverty is significantly undermined by the inadequate allocation by States of human and financial resources to legal aid services. In many instances, the fees legal aid lawyers are paid are far from commensurate with the amount of time and effort required to effectively litigate a criminal or civil case. Legal aid lawyers are often in short supply and overstretched. Legal aid providers therefore have to turn down a large proportion of deserving applications. In many countries, the number of applications for civil legal aid has risen, while resources allocated to legal aid have decreased. The lack of funding also dramatically impedes the quality of free legal services, as legal aid lawyers may be very inexperienced.

66. Even where legal aid services are available and adequately funded, discrimination in their design and implementation impedes certain individuals and groups from accessing them. For example, some rely on telephone intakes or written applications, failing to take into account the needs and constraints of persons with disabilities, older persons or those with lower levels of literacy. Inadequate or piecemeal support directed towards community-based paralegal programmes also restricts an important and more affordable source of legal assistance. Although all aspects of the legal profession should be regulated, excessive restrictions on the operation of paralegals, or lack of official recognition of their role, can also hamper the support they provide to persons living in poverty.

67. As well as quality and accessibility, the timing of legal assistance is of great importance. Often, when the poor are accused of criminal offences, they do not have access to a lawyer or paralegal until a trial is imminent. However, lawyers can play a crucial role at the time of arrest and during pretrial stages, especially in cases where the accused does not have access to legal information or financial resources for bail. As well as being in the interests of justice, timely legal intervention benefits the legal system as a whole, improving efficiency and reducing delays.

[18] *Programming for Justice: Access for All* (see footnote 2 above), p. 143.

E. Structural problems of judicial processes

Excessive delays

68. Owing to lack of adequate resources and qualified staff, limited budgets and inadequate infrastructure and logistical support, there are often unnecessary delays in adjudicating cases and enforcing judgements. In some jurisdictions, millions of legal cases are pending and civil and criminal cases take up to a decade to be completed.[19]

69. While those problems affect all people seeking justice through the formal justice system, they have a disproportionate impact on the poor, for whom a long process is not only a denial of justice but also unaffordable and may aggravate their situation. Often their cases are underprioritized owing to biased preferential treatment of the wealthy or lack of sensitivity or understanding of the impact of the delay on the poorest claimants.

Formalism

70. Without the resources to retain private legal assistance, and with restricted access to legal aid (see above), persons living in poverty are often forced to navigate the judicial system alone. In doing so, they encounter, in addition to the barriers listed above, a complex labyrinth of laws, traditions and interactions, with copious paperwork, the use of legal jargon and mainstream languages, and restrictive time limits, all of which can deter the poor from seeking justice under formal systems and impede fair outcomes.

71. Those barriers are particularly damaging in areas of law that frequently have an impact on the most marginalized, including property disputes, welfare claims and immigration proceedings, and have the effect of preventing the commencement of claims to enforce rights and seek remedies.[20] Even when they do not bar engagement with the judicial system altogether, cumbersome and complex procedural requirements may still obstruct access to justice by increasing the financial and time costs.[21]

72. Persons living in poverty are unfamiliar with, and often intimidated by, regulations regarding dress codes, the hierarchy of the court system, confrontational courtroom design, and traditions about when to sit, stand and address the judge. As a result, they are in an unequal and disadvantaged position before they even walk into the courtroom.

73. Requirements that demand a high level of evidentiary proof before civil claims can be instituted can have a disproportionate impact on the poor, who are hampered by their lack of financial resources, time and understanding of the law and of legal processes. Collating evidence, obtaining expert opinions and preparing forms in the

[19] See, for example, UN-Women Report 2011-2012, p. 54, and United Nations Office on Drugs and Crime, *Access to Legal Aid in Criminal Justice Systems in Africa, Survey Report* (New York, United Nations, 2011), p. 13.

[20] "Investigating the links between access to justice and governance factors: an objective indicators approach," United Nations Office for Drug Control and Crime Prevention Global Programme against Corruption, Research and Scientific Series, May 2001, p. 4.

[21] E/CN.4/Sub.2/2001/7, para. 19.

correct language can be an almost impossible process without the assistance of a competent legal representative.

74. Persons living in poverty are even further disadvantaged when they are conducting proceedings or making a claim against corporate entities or the State, whose power, reach and resources far outweigh theirs. This is particularly evident in criminal cases, where the State controls the collation and production of evidence. The process of collecting exculpatory evidence or obtaining expert testimony may prove prohibitively costly for the poorest and most vulnerable individuals and is even more difficult for those forced to remain in pretrial detention because of their inability to make bail or pay the necessary bribes. In such cases, individuals have little hope of having their charges fairly adjudicated at trial.

Differences in language and culture

75. While many people find it difficult to understand legal or judicial terminology, the complexities increase for many persons living in poverty in multilingual and multi-ethnic societies where legal proceedings are often conducted in a language that they do not understand.

76. This can constitute a significant barrier for the poorest and most marginalized, many of whom speak local languages or dialects, as well as for indigenous populations, ethnic minorities and migrants. In particular, those who are often excluded from education services, including women, are less likely to have received adequate schooling in the official or predominant language.

77. Despite States' obligation to ensure that individuals facing a criminal charge have access to a free interpreter (International Covenant on Civil and Political Rights, art. 14.3 (f)), often this service is limited, unavailable or reserved for those who speak a foreign language, rather than a minority language or local dialect, and is rarely provided in civil cases. The issue of language disproportionately disadvantages women, who are not only less likely to speak the predominant language and require an interpreter, but who are also vulnerable to abuse or exploitation by interpreters, whose cultural prejudices may inform their translation.

78. Even when the predominant language is spoken, cultural differences can impede communication within the judicial system. In addition to imbalances of power, in some cultural groups, different terminology may be used for specific occasions or to speak to people in a different relationship, and time and place may be described in different ways. Furthermore, intercultural communication between indigenous groups or ethnic minorities and judicial officers can be impeded by differences in perceptions of politeness; cultural taboos which prevent the giving of certain evidence; and reliance on interrogatory methods. When judicial processes do not adopt measures to facilitate cross-cultural communication and adapt to cultural differences, this may contribute to higher rates of conviction on criminal charges, undermining the right to a fair trial.

Lack of legal standing

79. Legal standing is the gateway for access to justice. To have access to the formal judicial system, it is necessary that the courts extend legal standing without discrimination, ensuring that all receive equal treatment when bringing claims, protesting violations or seeking remedies.

80. In practice, however, restrictions on legal standing in many States directly and indirectly exclude persons living in poverty from accessing judicial and adjudicatory mechanisms. For example, in some States, legislatures and judicial systems limit standing for certain groups, such as women and children. Discriminatory laws deprive women of legal competency and require that they be under male guardianship before instituting a claim or giving evidence.

81. In addition, narrow rules relating to legal standing prevent civil society organizations from taking a more direct role in litigation, or engaging in judicial proceedings on behalf or in support of persons living in poverty and other vulnerable groups (with their permission), who may lack the resources or capacity to do so themselves. For example, in 10 European Union member States, the domestic rules on legal standing are considered overly restrictive and therefore represent a major obstacle to the right to access justice. In those States, individuals cannot bring a claim to court unless they have full legal capacity (which often excludes those with certain disabilities) and are directly concerned in the matter.[22]

82. The presence of civil society in the judicial context can greatly improve the system. The ability of civil society organizations to support victims or bring cases on their behalf can reduce the financial and personal burden of legal action on the individual claimant. State restrictions on public interest litigation or on the filing of *amicus* briefs by civil society organizations can close off other avenues for access to justice for persons living in poverty. This is especially so in terms of remedy for structural or systemic abuses or discrimination, which affect large numbers of persons living in poverty.

Limited impact of litigation

83. In many jurisdictions, the effect of judgements is limited to those who litigate or bring a claim, even in cases that have a much wider significance. This means that only those individuals with the capacity or tenacity to overcome all the barriers to accessing justice will benefit from important judgements. Often, however, those living in poverty are affected by widespread practices or broad Government measures that generate situations where the rights of many individuals are at stake and which would be better addressed by collective remedies.

84. Implementation of a collective litigation mechanism by which findings and benefits are generalized beyond the actual litigants can ensure that human rights become meaningful for large numbers of people, even when those whose rights are being violated are not aware of the violation (or the rights). It can also draw the attention of the authorities to their constitutional and legal obligations regarding human rights.[23] In legal systems where courts have the power of judicial review or of issuing *erga omnes* judgements, which can declare certain laws or a state of affairs unconstitutional, this can have a positive effect in terms of securing justice for persons living in poverty.

[22] *Access to Justice in Europe: An Overview of Challenges and Opportunities* (European Union Agency for Fundamental Rights, 2010), p. 40.

[23] *Programming for Justice: Access for All* (see footnote 2 above), p. 88.

F. Challenges in ensuring human rights are upheld in informal justice systems

85. Considering that the formal justice system is often remote or difficult to access for persons living in poverty, their grievances are often resolved outside the formal justice system through alternative dispute resolution systems, including those based on traditional, customary or religious law. Indeed, research shows that people living in poorer communities are more likely to resort to informal justice systems; in some countries more than half of all legal disputes are resolved in this manner. For persons living in poverty, resolving disputes through a means other than the formal system is not necessarily due to preference but rather to the lack of choice available to them because of the inaccessibility of the State legal order, or to social or economic compulsion.[24]

86. Informal justice systems are often more accessible to persons living in poverty and may have the potential to provide quick, affordable and culturally relevant remedies.[25] However, informal justice mechanisms frequently exhibit some of the same weaknesses as State systems. For example, they may exclude women, minorities and disadvantaged groups, be susceptible to corruption and abuse of power, require payment from claimants or impose heavy fines, and in some there may be frequent lengthy delays in deciding cases.[26]

87. The complexity of plural legal orders is likely to privilege those who are well informed and wealthy, and disadvantage those who are poor or marginalized, as often occurs in the formal State justice system. Moreover, informal justice mechanisms can act as a barrier to meaningful justice, particularly for the poorest and most disadvantaged community members, often reinforcing existing power structures and promoting elite domination and influence. In some cases, non-State justice mechanisms prioritize the interests of the community over the interests of the individual, which may have the effect of exacerbating the situation of the worst off in the community. Rarely do informal mechanisms take into account the legal rights of the individuals involved or consider international human rights standards.

88. Customary and traditional justice systems can also threaten women's access to fair and equal justice. Informal justice systems based on custom, tradition or ethnic or religious identity often contain unequal provisions for women and men, do not have sanctions against gender-based violence or other abuses which take place in the domestic sphere, and are sometimes procedurally biased against women. This is especially problematic as it is family laws and property laws that are most often subject to the jurisdiction of such legal systems.

89. Sometimes such systems also impose extremely punitive measures for the commission of even minor crimes. Moreover, while non-State legal orders may often be praised for providing rapid justice, speedy justice proceedings are by no means always just, and indeed many have features that constitute human rights violations by omitting basic due process guarantees.

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[24] Indigenous peoples have specific rights regarding the maintenance and development of their own legal institutions and juridical systems: Declaration on the Rights of Indigenous Peoples (arts. 5, 34 and 40).

[25] *Doing Justice: How Informal Justice Systems can Contribute* (United Nations Development Programme and Oslo Governance Centre, 2006), p. 5.

[26] *When Legal Worlds Overlap: Human Rights, State and Non-State Law* (Versoix, Switzerland, International Council on Human Rights Policy, 2009), p. 53.

90. Despite challenges in informal justice systems, it is also important to note that State attempts to suppress the use of such systems can have severely detrimental effects on access to justice by the poor.

IV. Conclusions and recommendations

91. **States have a legal obligation to ensure that all individuals are able to access competent, impartial judicial and adjudicatory mechanisms equally and without discrimination. Access to justice is not only a fundamental right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.**

92. **Access to justice is essential for tackling poverty and protecting the human rights of persons living in poverty. Even mature democracies with well-functioning State institutions and technically inclusive and fair legal systems struggle to ensure de facto equal access to justice by those living in poverty. When the poor are unable to access justice equally and without discrimination, they are prevented from enjoying and claiming their human rights, and from seeking remedies to violations of their rights. This may exacerbate their situation, or frustrate their efforts to move out of poverty.**

93. **The principle of the indivisibility and interdependence of human rights requires States to address a range of intersecting and mutually reinforcing deprivations and obstacles which prevent access to justice for the poorest.**

94. **It is crucial to construct an inclusive justice system that is close to the people, both socially and geographically. Ensuring access to justice for the poor requires well-functioning judicial systems and laws that do not solely reflect the interests of wealthy and more powerful groups but also take into account income and power imbalances. Reforms must be implemented with the effective and meaningful participation of persons living in poverty.**

95. **Given the great diversity of social contexts, there is no "one size fits all" solution for ensuring access to justice for persons living in poverty. Differing national and local contexts create a variety of challenges and opportunities for reform that must be taken into account. Success in all contexts, however, will share the features of a human rights-based approach. Solutions require tackling not only legal obstacles but also a range of extralegal factors: social, economic, cultural, linguistic, etc. Solutions must be sought at local levels, designed and implemented with the active participation of the communities affected. Therefore, policymakers and legal authorities should have a specific contextual understanding of local legal institutions and the variety of obstacles on the ground that impede access to justice by persons living in poverty, and implement multidimensional solutions that can strengthen their agency and ensure their enjoyment of their rights. Special attention must be paid to women and groups that are particularly excluded, such as indigenous peoples, older persons and migrants. With this in mind, States must take immediate and effective action to ensure that persons living in poverty are not denied enjoyment of their human rights because of insurmountable obstacles which prevent them from accessing the justice system. To this end, the Special Rapporteur wishes to present the following recommendations.**

96. **States should:**

Social and cultural obstacles

- **Take positive measures to raise the capacity of poor and disadvantaged groups to ensure that they have full understanding of their rights and the means through which they can enforce them**
- **Actively disseminate legal and judicial information, for example about laws, legal decisions and policy decisions, to all without charge and in multiple formats and languages**
- **Ensure that civil society and community-based organizations are able and supported to advocate for the rights and inclusion of persons living in poverty, undertake non-formal legal education, disseminate general legal information and serve as independent monitors of judicial systems**
- **Address the practical factors that impede women's ability to claim their rights, including the status of women and gender-based stereotypes, prejudices and norms**

Legal and normative obstacles

- **Review or abolish legislation that directly or indirectly discriminates against the rights, interests and livelihoods of persons living in poverty**
- **Ensure that laws give due weight and consideration to the interests of persons living in poverty and the abuses which affect them**
- **Establish mechanisms to oversee the legality and reasonableness of administrative and policy decisions that have an impact on the enjoyment by the poor of their rights**
- **Make all efforts necessary to register all children immediately after birth, and identify and remove barriers that impede the access of the poor to registration, in particular groups that suffer multiple forms of discrimination; registration must be free, simple and available at the local level**
- **Ensure that all forms of gender-based violence, including domestic violence, are criminalized and are subject to appropriate and enforceable criminal sanctions; develop specific strategies and systems to tackle gender-based violence perpetrated against persons living in poverty, including by providing shelter for victims of domestic violence**

Institutional and structural obstacles in the justice chain

Physical access

- **Expand the geographical reach of the justice system (police, prosecutors, courts, legal aid, etc.) in particular in rural and remote areas, by:**
  - **Considering innovative measures such as mobile courts, one-stop justice shops, street clinics and homeless courts to increase practical access to justice for persons living in poverty, particularly the homeless and those living in rural communities**

- Creating incentives for police officers and other officials to take postings in rural and remote areas, and attracting well-trained legal professionals to those areas
- Taking steps to improve the physical accessibility of courthouses and police stations in order to ensure that persons with disabilities and others experiencing mobility issues are able to access them

Inadequate capacity

- Allocate sufficient financial and human resources to ensure the efficient and effective functioning of all organs of the judicial system, including police stations, prosecution corps and courts
- Provide training and education programmes for judicial officers, judges, lawyers, prosecutors and the police focusing on the rights and particular needs of the poor
- Ensure that adequate accountability mechanisms are in place to investigate and remedy any abuse or discrimination by law enforcement or judicial officers against persons living in poverty
- Create integrated and specialized services to address women's access to justice and ensure more efficient handling of gender-related crimes, including, for example, domestic violence courts and one-stop shops for sexual violence survivors; such services must be accessible and affordable for women living in poverty

Stigma

- Sensitize all justice service providers to the rights, needs and constraints of persons living in poverty, particularly the most vulnerable groups, by addressing negative stereotypes of the poor, including through performance evaluation, education and sensitizing the media

Excessive detention

- Review and reform detention and incarceration systems to ensure that they do not have a disproportionately harsh impact on those living in poverty
- Ensure that lack of financial resources does not negatively affect a person's chances of accessing justice in a fair and equal way during pretrial detention, for example regarding bail procedures, conditions of detention or accessing legal assistance

Fees and costs

- Put measures in place to ensure that legal, administrative and procedural fees relating to access to justice are waived for those who cannot afford them, including in small claims cases
- Ensure maximum use of available resources to provide progressively prompt and effective procedures to allow persons living in poverty to seek financial assistance to cover travel, accommodation and other costs associated with engaging with the justice system

Corruption

- **Take strong measures to eliminate corrupt practices in the justice system and in law enforcement, including the solicitation of bribes; such measures might include legislation criminalizing all forms of corrupt acts, dedicating resources to policing and prosecuting corrupt officials, requiring judges to make declarations of the assets, improving the working conditions and salaries of police and judicial officers, and improving mechanisms to ensure the transparency of judicial processes**

Legal representation

- **Ensure that persons living in poverty have practical and effective access to competent legal advice and assistance when needed for the protection of their human rights, including by making available sufficient resources to provide high-quality legal aid**
- **Ensure that legal aid is promptly provided to all arrested or detained persons who cannot afford to retain a lawyer; free legal assistance should be available at all stages of the criminal justice process, including during initial questioning and pretrial detention**
- **Ensure access to free and competent civil legal assistance for persons living in poverty where the enjoyment of human rights — civil, political, economic, social and/or cultural — is at stake**
- **Ensure that legal aid lawyers are independent, adequately trained and remunerated, and meet the highest standards of the legal profession**
- **Enhance legal skills and knowledge within local communities by, for example, funding and training quality paralegals at the local level**
- **Ensure that lawyers and paralegals have access to people living in poverty who require their services in police stations, pretrial detention and prison facilities**
- **Ensure that legal aid application procedures take into account the individual experiences, needs and constraints of the poor; eligibility must not be assessed on the basis of household income where the applicant does not have practical access to household resources**

Structural problems of judicial processes

Excessive delays

- **Allocate sufficient financial and human resources to ensure the efficient and effective functioning of all organs of the judicial system, including police stations, prosecution corps and courts**
- **Ensure that cases where the rights of persons living in poverty are at stake are not subject to long delays which might exacerbate their situation**
- **Ensure the effective enforcement of judgements and compliance with judicial rulings in favour of persons living in poverty**

Formalism

- **Take measures to reduce the complexity of legal processes and minimize and streamline rules and procedures to make them more accessible for those unfamiliar with the traditions and rules of those processes**

Differences in language and culture

- **Ensure that, in linguistically plural societies, court processes operate in languages used by the poorest communities where necessary and can adapt to intercultural communication**
- **Provide free interpreters in civil and criminal cases for those who require but cannot afford them**

Legal standing

- **Ensure that courts extend legal standing without discrimination to all persons regardless of, inter alia, their gender, ethnicity, legal status or lack of formal legal registration**
- **Take measures to ensure broader criteria for standing in courts, allowing civil society organizations and national human rights institutions to bring cases on behalf of or in support of persons living in poverty**
- **Allow and support collective litigation when structural or systemic issues affect the rights of persons living in poverty**

Limited impact of litigation

- **Ensure the possibility of strategic (public interest) litigation to challenge national laws or policies, to demand enforcement of existing laws or to strike down discriminatory laws that affect the poor**
- **Allow class action suits, or alternative mechanisms for bundling claims, and in relevant areas permit socially relevant litigation to have *erga omnes* effects, to ensure that those who do not have access to courts can benefit from judicial decisions**

Informal justice systems

- **Support mechanisms for alternative dispute resolution, where appropriate and in line with international human rights standards, ensuring that such mechanisms do not pose an obstacle to accessing the formal justice system for those that need or prefer it**
- **Ensure that informal justice systems operate in a manner consistent with human rights standards and that there are regulatory mechanisms to prevent and sanction abuses of power and corruption**
- **Ensure that serious crimes, including gender-based crimes or sexual violence, are dealt with within the formal justice system**
- **Continue to extend and expand equal access to the formal justice system for persons living in poverty, even in areas where non-State legal orders operate**